



August 8, 2003

The Honorable Michael K. Powell  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

Re: Notice of Proposed Ruling Making on TELRIC

Dear Chairman Powell,

On behalf of the Competitive Telecommunications Association ("CompTel"), I write to comment on the letter to your office dated July 29, 2003 from Congressmen Tauzin, Dingell and Upton. In that letter, the Congressmen urge you to take immediate action to address certain issues related to TELRIC, the economic pricing regime that controls the pricing of unbundled network elements. More specifically, they recommend that you promptly initiate a proceeding to reform the FCC's current pricing rules.

While CompTel adamantly disagrees with the concerns specified in the Congressmen's letter – including that the current rules discourage investment in telecommunications facilities and that the Bell Companies are not adequately compensated by the current rules for the use of their networks – we do agree and support the need to promptly open a robust inquiry into TELRIC to develop the type of detailed evidentiary record necessary to determine whether changes to the TELRIC regime are necessary. In fact, recent decisions by the Commission suggest that changed circumstances do indeed require reform of the TELRIC rules.

For example, one fundamental TELRIC premise is that the incumbents' entire full-service networks are unbundled and made available for competitive use and thus all of the investment necessary to build these full-service networks should be included in a TELRIC study. However, the Commission's decision in the Triennial Review Proceeding as outlined at its February 20 meeting indicates that the Commission has decided to limit competitive access to ILEC fiber plant and fiber-fed loops. The Commission must therefore consider whether the UNE rate for the loop should be reduced by the costs associated with the parts of the loop plant that CLECs have no federal legal authority to access or use. Indeed, if CLECs only have access to already-deployed copper loop plant, fundamental fairness and economic principles dictate that the CLECs not be charged for any capital cost associated with the ILEC deployment of a forward-looking fiber network that will be used by the ILECs to provide retail services.

Arguably, CLECs should only be charged the maintenance requirements of the legacy copper facilities to which they may be relegated.

Moreover, in fiber-fed loop situations, under federal law, CLECs may very well only have access to the “narrowband” capabilities of this plant. Thus, any charge to the CLECs for access to this plant must be less than its full forward-looking economic cost and must never exceed the cost of its functional equivalent – which may be just the maintenance costs on existing copper loops. The same economic principles dictate that, should FCC rules require ILECs only to unbundle “voice channels” on fiber distribution plant, only a small percentage of the costs of this loop plant should be allocated to the UNE. In short, since competitors no longer have full access to and use of the incumbents’ facilities, it is imperative that the Commission revise its current TELRIC rules to ensure that they are not charged as if they do.

Similarly, the TELRIC methodology adopted by the Commission in 1996 assumed that the entire capabilities of all network facilities are available as UNEs and therefore there was no need to re-allocate any of the costs associated with building a network, such as trenching, laying conduit and placing cable, away from UNEs. At that time, packet data services such as DSL and IP backbones were in their infancy in ILEC networks. Thus, the cost models and TELRIC pricing implementations of these models found it expedient to ignore those uses of ILEC full-service networks and to allow all costs of these networks to be incorporated into UNE rates. Over the past seven years, this has changed dramatically. Now, roughly 45% of all lines on the ILECs’ networks are not switched or special service lines, but are packet data lines. And while these packet data lines use the same structures, cables, loops, and wire center buildings as are used to provide UNEs, current TELRIC pricing generally requires none of the cost of the ILECs’ full-service networks to be allocated to these data services. This free ride must end; competitors should not be required to subsidize ILEC provision of data services through UNE rates. The Commission must therefore revise its TELRIC standards to ensure that an appropriate portion of total network costs are attributed to ILEC packet data services.

CompTel is also confident that development of a robust evidentiary record will conclusively disprove many of the common misperceptions about how the current TELRIC rules have actually been implemented by State Commissions. For example, when a record is compiled on whether loop plant architecture in a forward-looking model reflects, to the greatest extent possible, actual real-world topography and customer location, the Commission will discover that modern cost models do accurately account for these cost characteristics. In fact, a developed record will demonstrate that the rhetoric suggesting that current UNE prices assume that roads are not paved, mountains, rivers and other topographical hurdles do not exist, or that customers are improperly located completely ignores the sophisticated modeling that states use to set loop rates. The fact is that the current TELRIC models typically give the Bell Companies credit for *more* plant miles than they believe they actually have. Bell Company advocacy notwithstanding, State Commissions have not applied TELRIC in a way that ignores facts about the physical world, and properly presented evidence will bear that out. For these and other reasons, CompTel agrees that the Commission should promptly initiate a

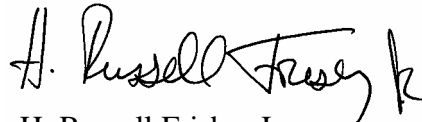
broad-based inquiry into TELRIC and that such an inquiry could be completed within a reasonably expeditious timetable.

We disagree, however, that the Commission should take any interim steps to reform or otherwise modify the manner in which TELRIC is being applied today. In particular, CompTel urges the Commission to deny and dismiss the “forbearance” petitions filed by Verizon, SBC, Qwest and BellSouth with regard to the application of TELRIC pricing rules to the UNE-P or their curious suggestion that the UNE supplier be permitted to charge IXCs access and thereby double-recover its costs. Even under the RBOC’s own theory, there is no sensible or sustainable argument that section 251 has been “fully implemented” given that these petitions were filed prior to the release and implementation of the FCC’s unbundling rules in response to the USTA Court’s decision.

Finally, the State Commissions have spent considerable time and resources reviewing cost studies and determining how to appropriately apply the FCC’s TELRIC guidance given the specific service and geographic characteristics present in their respective jurisdictions. Immediate interim changes to the TELRIC rules – without the benefit of a fully-developed record on the circumstances that may support changes to the rules – would do little but introduce confusion and uncertainty in an area where there is relative stability. A full and fair inquiry such as the one that could be conducted through a Notice of Proposed Rule Making is the appropriate way to address all issues and concerns and will serve both the industry and the public well.

Thank you for considering CompTel’s concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Russell Frisby, Jr.", with a stylized flourish at the end.

H. Russell Frisby, Jr.  
President